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[CLICK HERE FOR CEO's REPORT DATED OCTOBER 26, 2009](#)

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# County of Los Angeles CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration  
500 West Temple Street, Room 713, Los Angeles, California 90012  
(213) 974-1101  
<http://ceo.lacounty.gov>

WILLIAM T FUJIOKA  
Chief Executive Officer

Board of Supervisors  
GLORIA MOLINA  
First District

MARK RIDLEY-THOMAS  
Second District

ZEV YAROSLAVSKY  
Third District

DON KNABE  
Fourth District

MICHAEL D. ANTONOVICH  
Fifth District

September 9, 2009

To: Supervisor Don Knabe, Chairman  
Supervisor Gloria Molina  
Supervisor Mark Ridley-Thomas  
Supervisor Zev Yaroslavsky  
Supervisor Michael D. Antonovich

From: William T Fujioka  
Chief Executive Officer

A handwritten signature in black ink, appearing to read "W. T. Fujioka", is written over the printed name and title.

## REVIEW OF E-VERIFY SYSTEM

On August 25, 2009, on motion of Supervisor Antonovich, your Board directed the Chief Executive Officer, Acting County Counsel, and Director of Internal Services to review the E-Verify System (System). E-Verify is a free, internet-based system that allows participating employers to electronically verify the employment eligibility of their employees. Your Board requested a report within two weeks with recommendations on the feasibility of requiring participation by all future contractors that do business with the County.

Due to the complex nature of the issues related to the System, additional time is needed to allow for a thorough review and analysis. Therefore, we are requesting the due date on our report be extended 30 days to October 7, 2009.

If you have any questions or need additional information, please let me know, or your staff may contact Martin Zimmerman at (213) 974-1326 or [mzimmerman@ceo.lacounty.gov](mailto:mzimmerman@ceo.lacounty.gov).

WTF:ES:MKZ

FC:pg

c: Executive Officer, Board of Supervisors  
Acting County Counsel  
Director of Internal Services

2009-09 - 09-09-09 Review of E-Verify System

*"To Enrich Lives Through Effective And Caring Service"*

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Intra-County Correspondence Sent Electronically Only**



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WILLIAM T FUJIOKA  
Chief Executive Officer

October 26, 2009

To: Supervisor Don Knabe, Chairman  
Supervisor Gloria Molina  
Supervisor Mark Ridley-Thomas  
Supervisor Zev Yaroslavsky  
Supervisor Michael D. Antonovich

From: William T Fujioka  
Chief Executive Officer

Board of Supervisors  
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Fifth District

## STATUS REPORT ON E-VERIFY SYSTEM

On August 25, 2009, on motion of Supervisor Antonovich, your Board directed the Chief Executive Officer, Acting County Counsel, and Director of Internal Services to review the E-Verify system, a free Internet-based system that allows participating employers to electronically verify the employment eligibility of their employees; and to report back to the Board within two weeks with recommendations on the feasibility of requiring participation by all future contractors that do business with the County.

We have completed an initial review of the E-Verify system to assess the feasibility of requiring participation by all future contractors that do business with the County. The attached status report includes a discussion of the following areas:

- Background information on E-Verify ;
- Current use of E-Verify by the County;
- E-Verify use by Federal contractors;
- Non-Federal agencies that require the use of E-Verify; and
- Status of pending litigation involving E-Verify.

Additional work on these areas was held pending the resolution of Assembly Bill 1288, which the Governor vetoed on October 11, 2009. This bill would have prohibited the State, or a city, county, or special district, from requiring an employer (other than one of those government entities) to use an electronic employment verification system except when required by Federal law or as a condition of receiving Federal funds.

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Given that there are significant issues related to this system, we believe before the County moves forward with requiring all contractors to use this system, we should complete a thorough assessment of the system, including the following:

1. The Chief Executive Office (CEO) and Internal Services Department (ISD) will convene a workgroup of larger County departments with diverse contracting requirements, to include health and mental health, social services, justice, and community service departments. Based on the volume and variety of contracts managed by each department, the workgroup would assess the economic or operational impacts on departments associated with the implementation of E-Verify requirement for all County contractors. The workgroup would determine appropriate dollar thresholds, types of contracts, exemptions, etc., for a policy recommendation to your Board. The workgroup would also research and develop specific guidelines for using the system.
2. CEO and ISD will develop a formal survey instrument to be distributed to all County contractors in order to obtain feedback from contractors on the economic or operational impact associated with the implementation of a County E-Verify requirement.
3. CEO and ISD will continue to review other state and local governments' experience with requiring the use of E-Verify for their contractors. This must include an assessment of the accuracy and/or error rate of the system.
4. CEO and ISD will monitor any potential issues associated with the Federal government's implementation of the E-Verify program for future contractors, which went into effect on September 8, 2009.
5. County Counsel will continue to monitor pending or future litigation and report on any potential risk or liability issues that may impact E-Verify implementation for County contractors.
6. County staff will also meet with advocacy groups to solicit input and concerns.

If you have any questions on the above information, please call me, or your staff may contact Martin Zimmerman at 213.974.1326 or [mzimmerman@ceo.lacounty.gov](mailto:mzimmerman@ceo.lacounty.gov).

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FC:pg

Attachment

c: Executive Officer, Board of Supervisors  
Director of Internal Services  
Acting County Counsel

## **E-VERIFY SYSTEM**

### **Background**

In November 1986, Congress passed the Immigration Reform and Control Act of 1986 that required all employers to review newly hired employees' authorization to work in the United States by verifying their eligibility and identity. County Department Personnel Offices were required to manually review documents submitted by all new hires for employment eligibility. The "I-9" form, also identified as the Employment Eligibility Verification Form (see Exhibit I attached) was provided by the Federal government for that purpose. Every employee hired in the United States after November 6, 1986 is required to complete an I-9 at the time of hire.

The employer is required to verify the information on the I-9 against the identification provided by the employee in accordance with the List of Acceptable Documents identified on the form. No other verification process is required. However, the I-9 must be kept by the employer either for three years after the date of hire or for one year after employment is terminated, whichever is later.

On September 8, 1998, the County Board of Supervisors (Board) instructed the Director of Personnel to approve and sign a Memorandum of Understanding (MOU) with the Immigration and Naturalization Service (INS) and the Social Security Administration (SSA) to participate in a four-year pilot program established by the Federal government called the I-9 Employment Eligibility Verification, Basic Pilot Program (I-9 Basic Pilot Program). The program provided for electronic access to verify a person's employment eligibility submitted on the I-9 via an automated query to the SSA through a dedicated modem or telephone line.

In January 2002, Congress extended the I-9 Basic Pilot Program for another two years. On February 12, 2002, the Board passed a motion to continue the County's participation in the Basic Pilot Program.

In November 2003, the Federal government extended the I-9 Basic Pilot Program another five years. On March 9, 2004, the Board directed the Director of Personnel to continue the County's participation in the program which included the June 2005 transition from the previous dial-up functionality into a Web-based system that was renamed "E-Verify" in 2007.

Today, E-Verify is operated in partnership between the Federal Department of Homeland Security (FDHS) and the SSA, with the United States Citizenship and Immigration Services (USCIS) overseeing the program.

E-Verify works by allowing participating employers to electronically compare employee information taken from the paper I-9 form against more than 449 million records in SSA's database and more than 80 million records in FDHS' immigration databases. It

provides enhancements to the I-9 Basic Pilot Program by using a photo screening tool to detect forged or faked immigration documentation. The stated goals of the E-Verify program are to eliminate Social Security mismatches, improve the accuracy of wage and tax reporting, protect jobs for authorized U.S. workers, and help U.S. employers maintain a legal workforce.

In July 2009, the Secretary of FDHS reported that an average of 1,000 employers sign up for the E-Verify program each week, totaling more than 134,000 employers representing more than half a million locations nationwide. Citing confidentiality issues, FDHS will not release the names of those employers.

### **E-Verify Processing Time and Accuracy**

According to USCIS, under the current voluntary E-Verify program, the majority of E-Verify queries entered by employers (about 92 percent) confirm within seconds the employee is authorized to work. Of the remainder, approximately 7 percent of the queries cannot be immediately confirmed as authorized to work by SSA, and about one percent cannot be immediately confirmed as authorized to work by USCIS. This occurs because the employee information queried through the program does not match information in SSA or FDHS databases.

Most queries that are not resolved immediately are confirmed within 24 hours. Westat, an independent research firm commissioned by the FDHS in 2009, found that 96.9 percent of all queries run through the E-Verify system are automatically confirmed as authorized to work within 24 hours. This figure is based on statistics gathered from October through December 2008. FDHS reports, since October 1, 2008, more than six million queries have been processed through E-Verify by U.S. employers.

A June 2008 study by the United States Government Accountability Office (GAO) questioned the effectiveness of E-Verify. GAO indicated that a mandatory E-Verify program will necessitate an increased capacity at both USCIS and SSA. GAO also indicated the majority of erroneous non-confirmations occur because employees' citizenship or other information, such as a name change, is not up to date in the SSA database. Some groups have higher error rates.

A 2006 FDHS-commissioned study concluded that the E-Verify system's 10.9 percent error rate (defined as the rate at which legal workers receive an initial non-confirmation through the system) was "unacceptably high." This rate is even higher for some ethnic groups. E-Verify system has been controversial due to alleged high error rates in the databases used. USCIS acknowledges a 3.1 percent rate of initial non-matches in the system. Statistics on the current 2009 accuracy of the E-Verify system were not available.

## **Current Use of the E-Verify System in the County of Los Angeles**

Since 2005, County departments have used E-Verify to screen employment eligibility for newly hired County employees. Under the Board's authority, the Director of Personnel has authorized and provided training for 38 County departments to use the E-verify system. Basic identifying information on each County employee (consisting of the employee's name, social security number, date of birth, citizenship, and hire date) is entered into the E-Verify system after the employee is hired. Departments report that it takes two minutes or less to enter the information into the E-Verify system and receive a response.

The response comes back as either: (1) employment authorized, or (2) tentative non-confirmation which means the system has identified a problem with the employee's work status. The system does not identify the specific problem but advises the employee as to the company/agency where the employee can go (i.e., either SSA or FDHS) to resolve outstanding issues. Employees must be given at least eight Federal work days to resolve any issues, and if a resolution is not reached, or a final non-confirmation is issued, the individual is terminated.

Department of Public Works (DPW) and Internal Services Department (ISD) indicated that very few individuals are identified to be in a tentative non-confirmation status. In the course of DPW's use of the E-Verify system to screen employees, only one individual has been identified as non-confirmed. That individual did not return to DPW after being instructed to resolve the issue and was subsequently terminated.

When an employee is identified as authorized to work, the system provides an authorization message that is printed and placed in the employee's file to confirm that the E-Verify system was checked. DPW reports there have not been any issues with the E-Verify system going down or otherwise being unavailable.

ISD and DPW reported few problems, except for occasional discrepancies caused by employees who either use aliases or have changed names, or who lack acceptable documentation.

## **E-Verify Implementation for Federal Contractors**

On June 6, 2008, then-President Bush issued an executive order requiring Federal contractors to use the E-Verify system. This was amended to provide the E-Verify program would be required to be used by contractors with Federal contracts over \$100,000 and for work performed more than 120 days. It also applies to subcontractors if the "prime contract" has an E-Verify clause and is for services or construction projects over \$3,000.

Implementation has been delayed by litigation, including a December 2008 lawsuit brought by the U.S. Chamber of Commerce (discussed below). The Federal government implemented E-Verify for all future contractors beginning September 8, 2009.

Exemptions to the Federal contractor E-Verify program include:

- Contracts for commercially available off-the-shelf items and related services;
- Contracts less than \$100,000;
- Contract less than 120 days; and
- Contracts performed outside of the U.S.

#### Federal Contractor E-Verify Process

##### **MOU and Enrollment**

Federal contractors sign an MOU with FDHS to outline their respective responsibilities. The MOU document is available on the E-Verify Website, and contractors may enroll online. Subcontractors must enter into their own MOUs with FDHS. The E-Verify MOU is a standard document that delineates the responsibilities of each party. Specifically, the MOU outlines legal authority; identifies each party's responsibilities related to using the E-Verify system; sets forth safeguards and disclosure of data provisions; allows FDHS to monitor the using agency's or employer's compliance with the user agreement; provides points of contact for both parties; and provides the term of the MOU. There is no fee charged by FDHS to use the E-Verify system. Employees performing indirect or overhead support work will be excluded from the E-Verify requirements. For new hires, employers have three days from the hire date to enter I-9 information into the E-Verify system to conduct the search.

##### **Use of E-Verify Results**

Employers cannot use the E-Verify system to pre-screen employment eligibility; individuals must be offered a job (hired) before an employer can check their status on the E-Verify system. Employees wishing to contest adverse results must have the opportunity to do so and cannot be terminated until a secondary verification is done. If an employee does not contest the findings, then the employee may be terminated. If the secondary verification results in the SSA or DHR issuing a final non-confirmation, then the employee must be terminated.

#### **Non-Federal Government Agencies Use of E-Verify on Contractors**

A number of government agencies are reported to require contractors doing business with them to use the E-Verify program, including the States of Arizona, Colorado, Minnesota, Mississippi, Missouri, Nebraska, Oklahoma, Rhode Island, and Utah. Some counties and cities, including the California cities of Mission Viejo, Indio, Palmdale, and San Juan Capistrano, also require use of E-Verify for their contractors.

To date, we have contacted the Cities of Mission Viejo and Palmdale, and one of the contractors working for Mission Viejo, to discuss their experience requiring E-Verify for contractors.



Mission Viejo requires contractors to use E-Verify when an agreement pertains to services costing more than \$30,000. The City neither monitors contractors' use of E-Verify, nor requires contractors to submit documentation to prove they use E-Verify. However, Mission Viejo has standard language in their agreements that requires contractors to provide the City with "reasonable documentation" if requested. Mission Viejo indicates it has not experienced any major complaints, and few minor complaints, from the contractor community with the implementation or the use of the E-Verify. Mission Viejo is primarily a contract city with a small number of employees, so it may lack sufficient resources to perform active monitoring of contractors using E-Verify.

Mission Viejo provided us with contact information for two of their contractors. Of the two, one responded to our inquiry. The firm has two employees that administer the system. These employees are not dedicated to processing E-Verify checks, but administer the system as one of their work functions. The firm notifies potential employees about the E-Verify system prior to hiring. The firm indicated that it takes about a minute to run a check through the system. Whenever an E-Verify check shows a mismatch for an employee, the firm gives the employee paperwork to deal with the problem and notifies the employees that they have to take action.

The firm believes that one drawback to E-Verify is that the program does not allow prescreening before an employee is hired. As a result, the firm must hire an employee, run an E-Verify inquiry, get a tentative non-confirmation, and give the employee the day off work to get clearance. If the employee is not cleared, the firm is notified, and the employee is terminated. Because the employee was hired and paid wages, the firm must issue a W-2 to the employee at the end of the year. The task becomes an administrative matter for the firm when dealing with the paperwork for employees that were not eligible for work.

The City of Palmdale also requires contractors to certify they have checked employees with E-Verify, and will continue to do so throughout the duration of an agreement. Palmdale requires contractors to submit their employees through E-Verify if the contract value exceeds \$50,000. The City requires contractors and subcontractors to submit documentation proving current enrollment in E-Verify, but does not require contractors to submit documentation regarding their employees, unless Palmdale makes a "reasonable request" during an agreement period. We were not provided with a listing of the City's contractors to contact.

### **Opposition to E-Verify**

Several groups have expressed concerns regarding any initiative to mandate the use of E-Verify for contractors. These groups include:

- The Asian-Pacific American Legal Center;
- The Coalition for Humane Immigration Rights of Los Angeles (CHIRLA); and
- The National Immigration Law Center.

Among concerns expressed by these groups are the following:

- The E-Verify databases contain errors that result in false tentative non-confirmations for disproportionate numbers of Hispanics and Asians. In addition, since Hispanics and Asians are more likely than whites and blacks to be foreign-born, discrimination against foreign-born (or foreign-appearing) individuals may result in increased discrimination against Hispanics and Asians in particular, as well as against foreign-born individuals generally (*Findings of the Basic Pilot Program Evaluation*, Institute for Survey Research of Temple University and Westat, September 2007);
- Although the MOU forbids use of E-Verify for pre-screening employees, there are concerns some contractors may do this;
- Due to database errors, foreign-born lawful workers are 30 times more likely than native-born U.S. citizens to be incorrectly identified as not authorized for employment (Westat, September 2007 titled, *Findings of the Web Basic Pilot Evaluation*; and
- With regard to SSA-issued tentative non-confirmations, USCIS and SSA officials report the majority occur because employees' citizenship status or other information, such as name changes, is not up-to-date in the SSA database. SSA does not update records unless an individual requests the update in person and submits the required evidence to support the change in its records. Also, USCIS officials stated that when aliens become naturalized citizens, their citizenship status is often not updated in the SSA database. In addition, individuals who have changed their names for various reasons, such as marriage, without notifying SSA in person may also be issued an SSA tentative non-confirmation. According to SSA officials, although SSA instructs individuals to report any changes in name, citizenship, or immigration status, many do not do so (GAO Report, June 2007).

Beyond these concerns, potential workload impacts on small businesses are also noted. Further analysis would be required to determine if such concerns are warranted.

### **Litigation**

As described below, the pending litigation cases and status involving E-Verify include:

- Federal litigation over Arizona's law mandating E-Verify

In 2007, Arizona passed a law mandating use of E-Verify by all employers in the State beginning January 1, 2008. Two separate Federal lawsuits seeking to prevent enforcement of that law were thereafter filed by business, immigration and civil rights advocates (with different sets of named defendants and based

upon different legal theories). Both cases were heard by United States District Judge Neil V. Wake of the United States District Court, District of Arizona. The first lawsuit was dismissed by Judge Wake on December 7, 2007. Preliminary injunctive relief was denied as to all plaintiffs on December 21, 2007, as was a stay of enforcement of the Arizona Employer Sanctions Law pending an appeal of the first case. On February 7, 2008, Judge Wake entered a dismissal of the second lawsuit, thus, denying any relief to those who challenged the Arizona Employer Sanctions Law.

On February 20, 2008, the Court entered a supplemental order refusing to stay enforcement of the law pending appeal of the dismissal of the second lawsuit, as was requested by the plaintiffs. The Court held that the plaintiff business, immigration and civil rights groups had not established a likelihood that they would win on appeal and ruled that such an injunction would undermine the results obtained so far from the Arizona Employer Sanctions Law. The plaintiffs appealed to the United States Court of Appeals for the Ninth Circuit, but the appellate court denied both a temporary order pending appellate review on February 28, 2008, and relief on the merits on September 17, 2008.

In the ruling on the merits, the Ninth Circuit stated the Arizona law was constitutional on its face (that is, in theory) but left open any future ruling on how it might be enforced (in practice). The plaintiffs have petitioned the Supreme Court of the United States to review the judgment of the Ninth Circuit, but, to date, the petition has not been granted. The Supreme Court will make its determination on whether or not to accept the case for appeal by the end of the current term in October of 2010. Unless and until the Supreme Court accepts the case for appeal, the Ninth Circuit's decision in the matter remains citable law and the controlling legal authority on the issues discussed therein.

- Missouri city ordinance litigation

Though not technically a ruling over the mandatory use of the E-Verify program, the U.S. District Court for the Eastern District of Missouri upheld city ordinances that provided a safe harbor for employers who obtained employment verification through the E-Verify system, citing the Arizona Federal District Court's earlier rulings, and using many of the same reasons that were later advanced by the Arizona Federal District Court in its February 7, 2008 decision on a state's employer sanctions law.

- Federal litigation over Illinois law prohibiting the use of the E-Verify system until certain conditions are met

On September 25, 2007, FDHS sued the State of Illinois in Federal Court to prevent enforcement of a State law prohibiting employers from using the E-Verify

system until certain performance levels were reached or the program becomes Federally-mandated. Illinois stipulated not to enforce the law until the litigation was resolved.

On March 12, 2009, the Federal District Court for the Central District of Illinois ruled the Illinois State law invalid under the Supremacy Clause of the U.S. Constitution.

- Maryland contractor Federal litigation

On December 23, 2008, the U.S. Chamber of Commerce with other entities filed suit in the Maryland Federal District Court challenging new regulations require government contractors to verify and re-verify employees involved in certain Federal government contract work. The Chamber's position based on the suit and testimony can be summarized as follows:

- The Chamber supports legislative initiatives to develop and implement an electronic verification system, but it must be effective, efficient, and manageable;
- The Chamber does not support the mandatory reverification provision, as it would be too costly and/or burdensome for large businesses to reverify existing employees who have already been verified under applicable legal procedures;
- The Chamber urges that businesses with less than 50 employees be exempted, or consider alternatives, such as a telephonic option;
- The Chamber holds the position that prime contractors not be held liable for undocumented workers hired by a subcontractor, particularly when both would be required to independently verify the work authorization of their own employees;
- The Chamber believes E-Verify has a major flaw, in that the system can be easily fooled through the use of forged documents; and
- The Chamber argues that there needs to be an administrative and judicial review process, which would allow employers and workers to contest findings, and workers would be able to seek compensation for lost wages due to system errors.

On August 25, 2009, Judge Alexander Williams of the U.S. District Court for the District of Maryland (Southern Division) dismissed the lawsuit, holding that there was no legal or factual issue for trial. The Court held that a Presidential Executive Order required use of E-Verify for Federal procurement purposes and no contractor was required to use the system. It could simply refrain from seeking Federal contracts. To date, no appeal of this decision has been taken by any of the parties involved, and the time for filing an appeal will close on October 26, 2009 per U.S. Code Title 28, Rule 4(a)(1)(B).

Common themes in all suits are whether E-Verify is accurate and reliable, and the extent to which the Federal government and the various states can regulate immigration and employment relations within the United States.

### **California's AB 1288 (Fong)**

The California State Senate passed AB 1288 on August 24, 2009. This bill would have prohibited the State, or a city, county, or special district, from requiring an employer (other than one of those government entities) to use an electronic employment verification system except when required by Federal law or as a condition of receiving Federal funds.

The Governor vetoed AB 1288 on October 11, 2009, indicating the bill would create administrative burdens for employers receiving government funds. In addition, the Governor indicated the bill raises the potential for increased claims and litigation by placing new requirements in the Labor Code without also defining how the requirements will be enforced, and implicates constitutional questions regarding the State's authority to impose the prohibition against charter counties and cities for matters that may constitute municipal affairs. It is unlikely that the Legislature will override the Governor's veto of this bill.

### **County's Adoption of E-Verify Program – Legal Risks**

As current case law stands (pending the Supreme Court's decision on whether to accept review of the Ninth Circuit's decision in the Arizona litigation discussed earlier in this report), the courts have upheld the legality of the E-Verify program. However, while these cases validated the program in concept and theory, there is still the potential for individual employees to raise challenges as to a specific implementation of the program. Therefore, in order to reduce the risk of a successful legal challenge to any ordinance or policy the County may adopt requiring County contractors' participation in the E-Verify program, it would be important for the County to follow the policies and practices of the Federal government in its implementation and administration of E-Verify in order to ensure that the Program is not administered in a discriminatory fashion and that any employees who are identified by the E-Verify system as not having proper authorization to work are afforded their due process rights to challenge and rectify the outcome if they believe it is incorrect.

Of course, if a contractor decides to take legal action against the County on the basis that it is contractually required by the County to participate in the E-Verify program, the actual legal risks faced by the County could only be properly assessed after consideration of the particular allegations being made by the Contractor, and the specific terms and conditions of the contract between the County and the contractor. However, in light of the thus far unsuccessful outcomes of the legal challenges to E-Verify discussed hereinabove, it appears that the risk that such an action would be successful would be relatively low.

In addition, if a contractor is required under a County contract to participate in the E-Verify program, and, as a result, one of the contractor's legally-authorized employees is wrongfully terminated due to a mistake in the E-Verify system, there is a risk that the employee would seek to take legal action against the County. However, since the County would not be in a contractual relationship with such employee, the suit would not be a contractual claim, but rather would be a general tort claim based upon the case at hand, and an assessment of the legal risks faced by the County would require consideration of the particular facts and circumstances (which would vary on a case by-case basis).

**Form I-9, Employment  
Eligibility Verification****Instructions****Read all instructions carefully before completing this form.**

**Anti-Discrimination Notice.** It is illegal to discriminate against any individual (other than an alien not authorized to work in the United States) in hiring, discharging, or recruiting or referring for a fee because of that individual's national origin or citizenship status. It is illegal to discriminate against work-authorized individuals. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents presented have a future expiration date may also constitute illegal discrimination. For more information, call the Office of Special Counsel for Immigration Related Unfair Employment Practices at 1-800-255-8155.

**What Is the Purpose of This Form?**

The purpose of this form is to document that each new employee (both citizen and noncitizen) hired after November 6, 1986, is authorized to work in the United States.

**When Should Form I-9 Be Used?**

All employees (citizens and noncitizens) hired after November 6, 1986, and working in the United States must complete Form I-9.

**Filling Out Form I-9****Section 1, Employee**

This part of the form must be completed no later than the time of hire, which is the actual beginning of employment. Providing the Social Security Number is voluntary, except for employees hired by employers participating in the USCIS Electronic Employment Eligibility Verification Program (E-Verify). **The employer is responsible for ensuring that Section 1 is timely and properly completed.**

**Noncitizen nationals of the United States** are persons born in American Samoa, certain former citizens of the former Trust Territory of the Pacific Islands, and certain children of noncitizen nationals born abroad.

**Employers should note** the work authorization expiration date (if any) shown in **Section 1**. For employees who indicate an employment authorization expiration date in **Section 1**, employers are required to reverify employment authorization for employment on or before the date shown. Note that some employees may leave the expiration date blank if they are aliens whose work authorization does not expire (e.g., asylees, refugees, certain citizens of the Federated States of Micronesia or the Republic of the Marshall Islands). For such employees, reverification does not apply unless they choose to present

in **Section 2** evidence of employment authorization that contains an expiration date (e.g., Employment Authorization Document (Form I-766)).

**Preparer/Translator Certification**

The Preparer/Translator Certification must be completed if **Section 1** is prepared by a person other than the employee. A preparer/translator may be used only when the employee is unable to complete **Section 1** on his or her own. However, the employee must still sign **Section 1** personally.

**Section 2, Employer**

For the purpose of completing this form, the term "employer" means all employers including those recruiters and referrers for a fee who are agricultural associations, agricultural employers, or farm labor contractors. Employers must complete **Section 2** by examining evidence of identity and employment authorization within three business days of the date employment begins. However, if an employer hires an individual for less than three business days, **Section 2** must be completed at the time employment begins. Employers cannot specify which document(s) listed on the last page of Form I-9 employees present to establish identity and employment authorization. Employees may present any List A document **OR** a combination of a List B and a List C document.

If an employee is unable to present a required document (or documents), the employee must present an acceptable receipt in lieu of a document listed on the last page of this form. Receipts showing that a person has applied for an initial grant of employment authorization, or for renewal of employment authorization, are not acceptable. Employees must present receipts within three business days of the date employment begins and must present valid replacement documents within 90 days or other specified time.

**Employers must record in Section 2:**

1. Document title;
2. Issuing authority;
3. Document number;
4. Expiration date, if any; and
5. The date employment begins.

Employers must sign and date the certification in **Section 2**. Employees must present original documents. Employers may, but are not required to, photocopy the document(s) presented. If photocopies are made, they must be made for all new hires. Photocopies may only be used for the verification process and must be retained with Form I-9. **Employers are still responsible for completing and retaining Form I-9.**

For more detailed information, you may refer to the *USCIS Handbook for Employers* (Form M-274). You may obtain the handbook using the contact information found under the header "USCIS Forms and Information."

### Section 3, Updating and Reverification

Employers must complete **Section 3** when updating and/or reverifying Form I-9. Employers must reverify employment authorization of their employees on or before the work authorization expiration date recorded in **Section 1** (if any). Employers **CANNOT** specify which document(s) they will accept from an employee.

- A. If an employee's name has changed at the time this form is being updated/reverified, complete Block A.
- B. If an employee is rehired within three years of the date this form was originally completed and the employee is still authorized to be employed on the same basis as previously indicated on this form (updating), complete Block B and the signature block.
- C. If an employee is rehired within three years of the date this form was originally completed and the employee's work authorization has expired **or** if a current employee's work authorization is about to expire (reverification), complete Block B; and:
  - 1. Examine any document that reflects the employee is authorized to work in the United States (see List A or C);
  - 2. Record the document title, document number, and expiration date (if any) in Block C; and
  - 3. Complete the signature block.

Note that for reverification purposes, employers have the option of completing a new Form I-9 instead of completing **Section 3**.

### What Is the Filing Fee?

There is no associated filing fee for completing Form I-9. This form is not filed with USCIS or any government agency. Form I-9 must be retained by the employer and made available for inspection by U.S. Government officials as specified in the Privacy Act Notice below.

### USCIS Forms and Information

To order USCIS forms, you can download them from our website at [www.uscis.gov/forms](http://www.uscis.gov/forms) or call our toll-free number at 1-800-870-3676. You can obtain information about Form I-9 from our website at [www.uscis.gov](http://www.uscis.gov) or by calling 1-888-464-4218.

Information about E-Verify, a free and voluntary program that allows participating employers to electronically verify the employment eligibility of their newly hired employees, can be obtained from our website at [www.uscis.gov/e-verify](http://www.uscis.gov/e-verify) or by calling 1-888-464-4218.

General information on immigration laws, regulations, and procedures can be obtained by telephoning our National Customer Service Center at 1-800-375-5283 or visiting our Internet website at [www.uscis.gov](http://www.uscis.gov).

### Photocopying and Retaining Form I-9

A blank Form I-9 may be reproduced, provided both sides are copied. The Instructions must be available to all employees completing this form. Employers must retain completed Form I-9s for three years after the date of hire or one year after the date employment ends, whichever is later.

Form I-9 may be signed and retained electronically, as authorized in Department of Homeland Security regulations at 8 CFR 274a.2.

### Privacy Act Notice

The authority for collecting this information is the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 USC 1324a).

This information is for employers to verify the eligibility of individuals for employment to preclude the unlawful hiring, or recruiting or referring for a fee, of aliens who are not authorized to work in the United States.

This information will be used by employers as a record of their basis for determining eligibility of an employee to work in the United States. The form will be kept by the employer and made available for inspection by authorized officials of the Department of Homeland Security, Department of Labor, and Office of Special Counsel for Immigration-Related Unfair Employment Practices.

Submission of the information required in this form is voluntary. However, an individual may not begin employment unless this form is completed, since employers are subject to civil or criminal penalties if they do not comply with the Immigration Reform and Control Act of 1986.



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### **Paperwork Reduction Act**

An agency may not conduct or sponsor an information collection and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The public reporting burden for this collection of information is estimated at 12 minutes per response, including the time for reviewing instructions and completing and submitting the form. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Citizenship and Immigration Services, Regulatory Management Division, 111 Massachusetts Avenue, N.W., 3rd Floor, Suite 3008, Washington, DC 20529-2210. OMB No. 1615-0047. **Do not mail your completed Form I-9 to this address.**

**Form I-9, Employment  
Eligibility Verification**Department of Homeland Security  
U.S. Citizenship and Immigration Services

Read instructions carefully before completing this form. The instructions must be available during completion of this form.

**ANTI-DISCRIMINATION NOTICE:** It is illegal to discriminate against work-authorized individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents have a future expiration date may also constitute illegal discrimination.**Section 1. Employee Information and Verification** *(To be completed and signed by employee at the time employment begins.)*

Print Name: Last	First	Middle Initial	Maiden Name
Address (Street Name and Number)		Apt. #	Date of Birth (month/day/year)
City	State	Zip Code	Social Security #

**I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.**

I attest, under penalty of perjury, that I am (check one of the following):

- ☐ A citizen of the United States
- ☐ A noncitizen national of the United States (see instructions)
- ☐ A lawful permanent resident (Alien #) \_\_\_\_\_
- ☐ An alien authorized to work (Alien # or Admission #) \_\_\_\_\_ until (expiration date, if applicable - month/day/year) \_\_\_\_\_

Employee's Signature \_\_\_\_\_ Date (month/day/year) \_\_\_\_\_

**Preparer and/or Translator Certification** *(To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.*

Preparer's/Translator's Signature	Print Name
Address (Street Name and Number, City, State, Zip Code)	
Date (month/day/year)	

**Section 2. Employer Review and Verification** *(To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number, and expiration date, if any, of the document(s).)*

List A	OR	List B	AND	List C
Document title: _____		_____		_____
Issuing authority: _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____		_____		_____

**CERTIFICATION:** I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) \_\_\_\_\_ and that to the best of my knowledge the employee is authorized to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative	Print Name	Title
Business or Organization Name and Address (Street Name and Number, City, State, Zip Code)		Date (month/day/year)

**Section 3. Updating and Reverification** *(To be completed and signed by employer.)*

A. New Name (if applicable)	B. Date of Rehire (month/day/year) (if applicable)
C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment authorization.	
Document Title: _____	Document #: _____
Expiration Date (if any): _____	
I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.	
Signature of Employer or Authorized Representative	Date (month/day/year)

## LISTS OF ACCEPTABLE DOCUMENTS

All documents must be unexpired

### LIST A

**Documents that Establish Both  
Identity and Employment  
Authorization**

### LIST B

**Documents that Establish  
Identity**

### LIST C

**Documents that Establish  
Employment Authorization**

OR

AND

1. U.S. Passport or U.S. Passport Card	1. Driver's license or ID card issued by a State or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address	1. Social Security Account Number card other than one that specifies on the face that the issuance of the card does not authorize employment in the United States
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)		
3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa	2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address	2. Certification of Birth Abroad issued by the Department of State (Form FS-545)
4. Employment Authorization Document that contains a photograph (Form I-766)	3. School ID card with a photograph	3. Certification of Report of Birth issued by the Department of State (Form DS-1350)
5. In the case of a nonimmigrant alien authorized to work for a specific employer incident to status, a foreign passport with Form I-94 or Form I-94A bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, as long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form	4. Voter's registration card	4. Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal
	5. U.S. Military card or draft record	
	6. Military dependent's ID card	
	7. U.S. Coast Guard Merchant Mariner Card	5. Native American tribal document
	8. Native American tribal document	
	9. Driver's license issued by a Canadian government authority	6. U.S. Citizen ID Card (Form I-197)
	<b>For persons under age 18 who are unable to present a document listed above:</b>	7. Identification Card for Use of Resident Citizen in the United States (Form I-179)
6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI	10. School record or report card	8. Employment authorization document issued by the Department of Homeland Security
	11. Clinic, doctor, or hospital record	
	12. Day-care or nursery school record	

**Illustrations of many of these documents appear in Part 8 of the Handbook for Employers (M-274)**



# County of Los Angeles CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration  
500 West Temple Street, Room 713, Los Angeles, California 90012  
(213) 974-1101  
<http://ceo.lacounty.gov>

WILLIAM T FUJIOKA  
Chief Executive Officer

November 1, 2011

To: Mayor Michael D. Antonovich  
Supervisor Gloria Molina  
Supervisor Mark Ridley-Thomas  
Supervisor Zev Yaroslavsky  
Supervisor Don Knabe

From: William T Fujioka  
Chief Executive Officer

Board of Supervisors  
GLORIA MOLINA  
First District

MARK RIDLEY-THOMAS  
Second District

ZEV YAROSLAVSKY  
Third District

DON KNABE  
Fourth District

MICHAEL D. ANTONOVICH  
Fifth District

## REPORT ON USE OF E-VERIFY SYSTEM FOR COUNTY CONTRACTORS

This memorandum is to provide your Board with background on prior Board actions and requests, as well as reports from this Office, regarding the feasibility of requiring the use of E-Verify by County contractors, and advise your Board of recently-adopted State legislation which prohibits State and local government in the State from imposing such requirements.

### **Background**

On August 25, 2009, on motion of Supervisor Antonovich, your Board directed the Chief Executive Officer, Acting County Counsel, and Director of Internal Services to review the Federal government's E-Verify system, and to report back with recommendations on the feasibility of requiring participation by all future contractors that do business with the County.

We completed an initial review of the E-Verify system, and provided a status report to your Board on October 26, 2009. The status report also noted that, on October 11, 2009, Governor Arnold Schwarzenegger vetoed Assembly Bill 1288, which would have prohibited the County from requiring private employers to use an electronic employment verification system, except when required by federal law, or as a condition of receiving federal funds. In addition, the status report indicated that this Office would convene a workgroup of large County departments to assess the economic and operational impacts associated with implementation of E-Verify for all County contractors, and that County Counsel would continue to monitor pending or future litigation that could impact this issue.

*"To Enrich Lives Through Effective And Caring Service"*

***Please Conserve Paper – This Document and Copies are Two-Sided  
Intra-County Correspondence Sent Electronically Only***

On November 24, 2009, on motion of Supervisor Molina, your Board directed the Chief Executive Office, Acting Director of Personnel, and County Counsel to prepare a comprehensive review with the County's own E-Verify system, including the County's process, as well as potential liability from contractors, employees, or other entities for requiring County contractors to implement E-Verify. On March 10, 2010, we provided your Board a report on the County's experience in using the E-Verify system. At the same time, we indicated that all pending court cases relating to E-Verify were still unresolved, and County Counsel would continue to monitor and report all pending or future litigation related to E-Verify.

**AB 1236 (Employment Acceleration Act of 2011)**

On October 9, 2011, Governor Jerry Brown signed into law AB 1236, the Employment Acceleration Act, adding a new Article 2.5 entitled "Electronic Employment Verification Systems" (commencing with Section 2811) to Chapter 2 of Division 3 of the California Labor Code. The new law takes effect January 1, 2012 and provides that the State of California, city, county or local governments cannot mandate participation in the E-Verify program by private business owners, and reaffirms that for most private business employers, participation in the E-Verify Program is optional. As stated in the preamble, the bill prohibits the state or any city or county from requiring employers to use the E-Verify system as a condition of receiving a government contract or as a condition for maintaining a business license, except when required by federal law or as a condition of receiving federal funds.

Specifically, Section 2812 provides as follows:

Except as required by federal law, or as a condition of receiving federal funds, neither the state, nor a city, county, city and county, or special district shall require an employer to use an electronic employment verification system, including under the following circumstances:

- (a) As a condition of receiving a government contract.
- (b) As a condition for applying for or maintaining a business license.
- (c) As a penalty for violating licensing or other similar laws.

Section 2813(a) further provides that for purposes of Article 2.5, the term "electronic employment verification system" includes the E-Verify program.

AB 1236's clear prohibition obviates the County from requiring its contractors to participate in the E-Verify Program, except when required by federal law or as a

Each Supervisor  
November 1, 2011  
Page 3

condition of receiving federal funds. At this time, participation in the E-Verify program is not a condition for receipt of federal funds in any contracts administered by the County.

Please let me know if you have any questions, or your staff may contact Martin Zimmerman at 213.974.1326 or [mzimmerman@ceo.lacounty.gov](mailto:mzimmerman@ceo.lacounty.gov).

WTF:EFS:MKZ  
FC:JH:ib

c: Executive Office, Board of Supervisors  
County Counsel  
Internal Services Department

E-Verify System for County Contractors\_Brd Memo